

### **REMARKS**

Applicants thank the Examiner for indicating that the Drawings submitted on January 9, 2006 are acceptable. Applicants further thank the Examiner for granting priority to the July 9, 2003 filing date of international application PCT/JP2003/08740.

Applicants thank the Examiner for his reconsideration and withdrawal of the former objections to claims 50, 55, 60, and 71 in view of applicants' amendments and arguments in their April 11, 2008 response. Applicants also thank the Examiner for his reconsideration of the written description and enablement rejections of claims 45-52 and 55-85 and the anticipation rejection (over Lee et al.) of claims 45-47, 52, 55, and 59, and his withdrawal of those rejections in view of the applicants' claim amendments and arguments.

#### **The Claim Amendments**

Applicants have canceled claims 45-46, 52, 59, 61-62, 64-67, 73-75, 77 and 81-83. Claims 47-50, 55, 58, 69-71, 76 and 78-80 remain pending (applicants had previously canceled claims 1-44, 51, 53-54, 56-57, 60, 63, 68, 72, and 84-85).

Applicants have amended claim 47 to recite the elements of former claim 45 (now canceled). This amendment is supported by former claims 45 and 47. Applicants have also amended other of the claims to depend them from amended claim 47, not canceled claim 45. Applicants request entry of these amendments.

Applicants have made these claim amendments and cancellations without prejudice to their seeking claims to the canceled subject matter in applications claiming priority or benefit from this application. These claim amendments are also specifically in response to the Examiner's 103 rejection. They narrow the claims and place them in form for allowance or in better form for appeal. Thus, they are proper on FINAL. 37 C.F.R. §1.116.

### **The Rejection**

#### **35 U.S.C. §103 –Obviousness**

Claims 45-50, 52, 55, 58-59, 61-62, 64-67, 69-71 and 73-83 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over Lee et al., FASEB Journal, 2001; 15: p. A663, #523.9 ("*Lee*") in view of Morishita United States patent 6,262,033 ("*Morishita*") and further in view of Debs United States patent 5,641,662 ("*Debs*") and further in view of Cutie United States patent 6,464,959 ("*Cutie*"). Applicants have canceled claims 45-46, 52, 59, 61-62, 64-67, 73-75, 77, and 81-83. This moots the rejection as to these claims. Applicants traverse the rejection to the extent it is maintained in view of the amended claims.

In contending that the applicants' previous arguments were unpersuasive, the Examiner argues that *Morishita* teaches that asthma is a disease which is associated with NF- $\kappa$ B expression. He points to the Background Art Section of *Morishita* for supposed support. The Examiner is mistaken.

The Background Art Section of *Morishita* recites that the overexpression or underexpression of one or a few proteins is a major etiological factor in a variety of diseases, including asthma (col. 1, lines 15-19). Nothing in that sentence suggests that NF- $\kappa$ B is a factor in asthma. The sentence merely refers generally to "one or a few proteins" (with no mention of NF- $\kappa$ B) and to a large list of diseases.

The next sentence of the Background Art Section of *Morishita* also does not refer to NF- $\kappa$ B. It says that a variety of transcriptional activators and inhibitors are involved in the expression of proteins (*see* col. 1, lines 20-22). Again, there is no suggestion that any specific factor or protein is related to asthma or for that matter which protein might respond to which factor.

The next sentence of the Background Art Section of *Morishita* does refer to NF- $\kappa$ B. It says that NF- $\kappa$ B is a transcription regulatory factor (*see* col. 1, lines 23-25). However, there is no suggestion in this sentence that NF- $\kappa$ B, or any other specific factor, is related to asthma or any protein that is related to asthma.

In sum, the Examiner's attempt to build from these three sentences of the Background Art Section of *Morishita* a mosaic that suggests that NF- $\kappa$ B is related to asthma fails. These sentences say only that one or more unidentified proteins may be related to asthma (and many other diseases), that various unidentified transcription factors regulate the expression of proteins in general, and that NF- $\kappa$ B is a transcription regulatory factor for some proteins, without any identification of which proteins or to which diseases those proteins might be related.

Therefore, applicants request that the Examiner reconsider and withdraw the asthma prong of his rejection.

The Examiner also argues that *Morishita* teaches that NF- $\kappa$ B may be useful in the treatment of ischemic lung diseases (*see* col.1 lines 55-65). He also contends that ischemic lung disease can be viewed as a respiratory disease. Applicants have amended the claims to distinguish them from the lung disease of *Morishita*. As amended, the claims recite three respiratory diseases: asthma, rhinitis, and COPD. None is ischemic lung disease. Moreover, the treatment of ischemic lung disease with NF- $\kappa$ B, as referred to in *Morishita*, does not teach or suggest that NF- $\kappa$ B would be useful in other respiratory diseases and certainly not in asthma, rhinitis, and COPD. Ischemic lung disease has nothing in common with asthma, rhinitis, and COPD. In view of these claim amendments and arguments, applicants request that the Examiner reconsider and withdraw the rejection.

The other cited documents (i.e. *Debs* and *Cutie*) do not remedy *Morishita's* lack of disclosure in the context of the amended claims. Therefore, they, even in combination with *Morishita*, do not render the amended claims obvious.

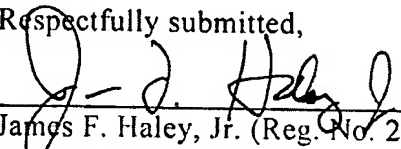


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### CONCLUSION

For all of the above reasons, applicants request that the Examiner reconsider and withdraw the one remaining rejection and allow the amended claims.

Respectfully submitted,

  
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